IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10592 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEPUTY EXECUTIVE ENGINEER

Versus

RIYAZUDDIN SUBHAMIYA

Appearance:

1. Special Civil Application No. 10592 of 1993

MR PRADIP BHATE A.G.P. for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 08/04/2004

ORAL JUDGEMENT

The Deputy Executive Engineer, Guhai Canal, Sub-Division - I & II at Himmatnagar has approached this Court by filing this petition under Article 227 of the

Constitution of India challenging the judgment and award made by the Labour Court, Ahmedabad, in Reference (L.C.A.) No. 798 of 1989 dated 27th July, 1993. By the said award, the Labour Court has partly allowed the Reference filed by the respondent and has directed the petitioner by quashing the impugned order of termination of service to reinstate the respondent on his original post together with all the incidental benefits including promotion, bonus and to pay to him 75% backwages.

1.1. From the record of the petition, it appears that the respondent was employed as driver on daily wage basis with effect from 29th May, 1982, and he continued to work on that capacity till 14th March, 1989. According to the respondent on that day by oral order, he was relieved from the service by the petitioner. It is the say of the respondent that all throughout he had worked on permanent post of the driver and had rendered continuous service with the petitioner, till it was terminated. His record of service was absolutely clean and he had not caused any accident or mishap whereby property of the petitioner was damaged. His grievance was that despite there being no reasonable cause, his service was terminated by the petitioner. He, therefore, raised demand for reinstatement and also served the petitioner with appropriate notice under the provisions of the Industrial Disputes Act, 1947. Since, the industrial dispute which was also referred to the Conciliation Officer could not be resolved, ultimately, the Labour Commissioner vide order dated 25th May, 1989 referred the same for adjudication to the Labour Court.

1.2. Before the Labour Court, the respondent repeated the same story. He further submitted that while terminating his service, no retrenchment compensation was paid to him nor any notice pay or notice was given to him. He had also asserted the fact before the Labour Court that his junior one Premsinh Ranjitsinh Padhiyar was retained in the service by the petitioner and his service was terminated. According to him, the petitioner had thereby given goby to the principle of "last come first go". He, therefore, prayed that the petitioner be directed to reinstate him on his original post together with backwages and all other incidental benefits.

1.3. From the judgment of the Labour Court, it appears that no written statement was filed by the petitioner to the statement of claim of the respondent. However, certain documents were produced, one of them being para-wise remarks/reply to the contentions of the respondent. The Labour Court has reproduced them in the

judgment. It appears that the say of the petitioner before the Labour Court was that the respondent was appointed purely on daily wage basis and whenever there was requirement of the driver for driving truck, jeep, Tanker, pickup van, roller, etc., he was called service and he was not called every day. Further the respondent had not completed 240 days in three years prior to the date of the termination of his service and, therefore, there was no question of complying with the provisions of Section 25-F of the Industrial Disputes Act. Further contention is that since the presence of the daily wager was being marked in the register, there was no question of publishing any seniority list. It was, therefore, prayed that the Reference be dismissed.

2. Before the Labour Court, both the parties have adduced evidence. The respondent has examined himself, whereas, the petitioner had examined one Amrutlal Maganlal Gora as his witness. Having taken into consideration the entire material that was placed before the Labour Court, it came to the conclusion that the respondent had worked for more than 240 days in preceding year and, therefore, compliance of Section 25-F of the Industrial Disputes Act, was compulsory for the petitioner, secondly that any order terminating his service without following the said provisions was bad in law. The Labour Court also held that the junior of the respondent was retained in the service whereas the respondent's service was terminated and thereby, the petitioner had committed breach of Section 25-(G) & (H) of the Industrial Disputes Act. It has also came to the conclusion that the respondent rendered continuous service on permanent post and his service therefore could not have been terminated in this fashion. About the question of backwages, the Labour Court has held that there was no evidence produced by the petitioner to the effect that the respondent was gainfully employed elsewhere, after his service was terminated. As against that, the respondent was able to show that he was not employed elsewhere, but the family was being maintained on the income derived by the tailoring work done by his wife. In view of the said finding, the Labour Court partly allowed the Reference and gave the aforesaid direction to the petitioner.

3. Mr. Pradip Bhate learned A.G.P. appearing for the petitioner has submitted that considering the evidence on record, it is clear that the respondent did not work for 240 days in the preceding year as required under law and, therefore, there was no question of compliance of Section 25-F of the Industrial Disputes

Act. He has, further submitted that the respondent was not relieved from the service but he was offered job elsewhere but he declined to go there. Therefore, it was voluntary abandonment of service by the respondent for which no fault can be found with it. Lastly, he has submitted that the Irrigation Department not being an "Industry", the Labour Court was not the appropriate forum for raising such dispute. On the question of backwages, Mr. Bhate has submitted that award of 75% backwages is on the higher side because the respondent, being a driver would have certainly worked somewhere else or would have generate income to maintain his family.

3.1. As against that Mr. Mukesh Rathod learned advocate appearing for the respondent has supported the judgment of the Labour Court and has submitted that considering the material on record, the finding given by the Labour Court are just and proper and no interference is called for by this Court.

4. Having gone through the record of this petition, it appears that there is no dispute regarding the fact that the respondent was employed on daily wage basis as driver with effect from 29th May, 1982 and he continued to work as such till 14th March, 1989. According to the respondent, on that day, by oral order his service was terminated. As against that the say of the petitioner appears to be that he was offered job elsewhere, but he did not go. The judgment of the Labour Court, reproduces the details regarding attendance of the respondent in different years. If the last three preceding year are taken into consideration that would show that in the year, 1985, the respondent had worked for 305 days, in the year 1986, for 248 days, in the year 1987, for 180 days, in the year 1988, for 247 days. It is, therefore, clear, that in the preceding year, he had worked for more than 240 days. Though the petitioner has failed to produce proper evidence in the form of attendance registers, the details referred to in the judgment establish this fact. It is, therefore, evident that the petitioner was required to comply with the provisions of Section 25-F of the Industrial Disputes Act. Admittedly, that has not been done. The finding of the Labour Court on that count therefore, appears to be legal and proper.

4.1. Further it is found by the Labour Court that even when the respondent was relieved from the service, one Premsinh Ranjitsinh Padhiyar who was not only junior to him by six years, but who possessed lesser educational qualification that the petitioner was retained in service and thereby the petitioner had flouted the well-known

principle of service jurisprudence "last come first go". When that is being done by the petitioner, it would amount to committing breach of provisions of Section 25-(G) & (H) of the Industrial Disputes Act. On that count also, the finding of the Labour Court is proper.

4.2. Further except for producing some letter to the fact that the respondent was asked to work in any other division, which was refused by him, there is no material on record to show that he was offered job elsewhere by the petitioner. In fact the judgment of the Labour Court shows that no such contention has been raised by the petitioner before it, meaning thereby, that the petitioner himself did not attach much importance to the said letter. In view thereof, submissions of Mr. Bhate cannot be accepted.

4.3. Further Mr. Bhate has submitted that Irrigation Department is not an "Industry" and Labour Court had no jurisdiction to entertain the proceedings. No such contention appears to have been raised before the Labour Court. This being a mixed question of fact and law, it ought to have been raised at the earliest i.e. before the Labour Court. When that has not been done, the petitioner at this stage cannot be permitted to raise such contention for the first time in petition under Article 227 of the Constitution of India.

4.3. So far as the award of 75% backwages is concerned, the Labour Court has found that no material was produced by the petitioner to substantiate its say that the respondent was gainfully employed after termination of his service. When that material is not coming forth, and when the respondent himself has stated on oath that his family members were mainly maintaining themselves on the income of his wife, there is no difficulty to accept the version of the respondent. The Labour Court has exactly, done the same thing. However, the Labour Court has also drawn legal inference that as a driver, the respondent might not have sat idle for all these time and, therefore, legitimately, it has directed 75% of the award of the backwages.

Thus, considering the facts and circumstances of the case, the judgment and award passed by the Labour Court, are absolutely just, proper and no interference is called for from this Court. This petition is, therefore, dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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